buy much from them. We started selling that line in June, July, something like that, of last year, which was -- I guess, I don't really know the SPF market all that much, but I guess it's after the season. So we didn't sell much of it.
Q When is the last time you made an order from Plaza Sports
A I don't remember.
Q Was it last year?
A 2005. Yes, it was.
Q Was it before the subpoenas were issued to Plaza Sports?
A Yes.
Q Did you get a call from Plaza Sports about the subpoena?
A No.
Q Did they ever contact you about the subpoena?
A I never contacted --
Q When I say you, I want to be clear, you or S&L Vitamins or Larry.
A As far as I know, no. No, as far as I know.
Q Has anyone refused to do business with

S&L Vitamins because of the subpoenas that our law firm or Mr. Earley's law firm sent out?
A Danny wasn't crazy about it.
Q Has Mr. Sheehan refused to do business with you?
A No.
Q In fact, he's lowered his price or his cost to you?
A Oh, he has to. He didn't do that on his own will.
Q So how has your business been crippled?
A We can't expand. We can't try to find other suppliers at this point.
Q Why not?
A Or we will not try to find other suppliers.
Q Why would you want to find other suppliers if Mr. Sheehan is selling you products?
A Never put all your eggs in one basket.
Q So are you implying by that answer that but for this lawsuit, you would attempt to just purchase them directly from a distributor?
A I would never purchase them directly from a distributor. I never had.

Q Why not? Why would you pay Mr. Sheehan 20 percent for doing nothing when you can go to a distributor?
A Isn't that the basis of why we're all sitting here?
Q I don't think that answered my question.
Why would you pay Mr. Sheehan 20 percent for essentially just being your orderer to get the products?
A Because if I buy it from a distributor, then I would presume that would include me under these contracts that we are right now not bound by.
Q So you can use Mr. Sheehan or any tanning salon as a shield, if you will, to --
A We're not using anybody. These tanning salons want to do it. These tanning salons are selling more lotion when they sell it to us than they ever would.
Q But you're aware of Australian Gold's contracts with the distributors that say you can't sell to people who sell on the Internet?
A As I said before, I was aware of that when I received the first cease and desist letter

in 2004.
When we informed Australian Gold or its law firm exactly how we were getting the products, they said we were doing nothing wrong and left us alone. Why would we change?
Q Who at Australian Gold said you were doing nothing wrong?
A I didn't hear it personally.
Q Would that have been through your counsel?
A It was through counsel.
Q Were you ever shown a document or a piece of paper from Australian Gold or its attorneys that said you're doing nothing wrong, you can continue to buy from these tanning salons and we'll leave you alone?
A No.
Q So when you say Australian Gold said you're doing nothing wrong, that was just your understanding you got from communications that apparently took place between you and your attorney?
A Also the threats and the back and forth letters from counsel stopped after that point.

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So I did believe it, of course.
Q How much business have you done with Mr. Sheehan over the years?
A I'm not really sure.
Q Have you kept track of that in any way?
A No.
Q Is there anything written down saying we've purchased a $100,000, $200,000 worth of products from Mr. Sheehan?
A I have no clue. The only way I could find that out is going through the checks and adding them all up. I don't know maybe you guys have done that already. I know you have most of the checks.
Q Has Mr. Sheehan been paid by any other party other than S&L Vitamins?
A How do you mean?
Q Has Steve Mercadante or Larry Sagarin personally wrote him a check or have --
A No. It was all company checks.
Q All company checks?
A Yes.
MR. COLEMAN: I just want to remind you again to please really make sure that Scott

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has a chance to finish his question before you answer.
THE WITNESS: I apologize.
MR. MATTHEWS: Thanks.
Q Has Larry Sagarin's company or any other company written checks to Mr. Sheehan or Yucatan for products?
A I don't know.
Q Again, I'm talking about your Internet sales?
A Right.
Q Why don't you know?
A I don't know who Danny receives checks from otherwise. I know that when Danny orders products for us, we pay him with a company check.
Q That's what I'm talking about.
A Outside of that, I have no idea who gives him checks.
Q I'm not talking about his other businesses. I'm talking about for sales that have transpired through S&L Vitamins, two websites that you've identified, if anybody else other than S&L Vitamins has written him a check or paid him money, whether it be cash, cashier's

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check or credit card?
A No cash, no cashier's check, no credit card from us. From what I understand what you had asked me was, you said has anybody other than S&L Vitamins paid Danny that way. I don't know.
Q No. What I'm talking about, for products for which S&L Vitamins has received from Mr. Sheehan?
A Okay.
Q Has anyone other than S&L Vitamins paid Mr. Sheehan or his business?
A No.
MR. COLEMAN: Can we go off the record?
(A recess was taken.)
Q Have you ever been to 15 East Deer Park Road in Dix Hills, New York?
A What's at 15 East Deer Park Road?
Q I have that as an address for Body Source Limited?
A What was the city?
Q Dix Hills.
A That's the original Body Source that we spoke about earlier. I was incorrect by saying Northport, sorry.

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Q That's the retail location that Mr. Sagarin started in '97 or so?
A No. I believe it was certainly earlier than that. I don't know the date that that opened up, but it's gone now.
Q You had mentioned something about being on the Jericho Turnpike; is that the same?
A That's the one, yes.
Q That's the same?
A Yes. I apologize.
Q Does Body Source Limited refresh your memory as to whether that was the name of Sagarin's company?
A It could be.
Q Is there any affiliation between S&L Vitamins, Inc. and Body Source Limited?
A No.
Q Would you give me all the names under which S&L Vitamins has done or is doing business?
A Yes.
Q Please do that.
A Danny -- I'm sorry.
Q The names under which you're doing business, the d/b/a's, assumed business names?

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A Well, S&L Vitamins is the corporate name. Body Source, the websites are BODYSOURCEONLINE.COM, THESUPPLENET.COM. We also have DRILLSANDTAPS.COM. And I'm sorry, Source Pharmaceuticals as well.
Q What is the Source Pharmaceuticals?
A We bottle two different dietary supplements that are labeled under that name.
Q When you say they're labeled under that name, what do you mean? What kind of supplements are they?
A One is a diet pill and one is a sexual enhancer.
Q So you put your only label on it and sell it to the general public?
A Correct.
Q What's the brand name of these products?
A Well, we have it made from a nutritional manufacturer out in Long Island, so it's all made from them, through their labs, through their insurances and they put our label on it.
Q What's the label, that's what I'm trying to find out, what does your label say on the diet pills and the sexual enhancer pills, what's the

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name of the products?
A One is named Impulse RX, that's the sexual enhancer. And the other is Appedrene. That's the weight loss supplement.
Q Does it say Source Pharmaceuticals on the label anywhere?
A Yes.
Q What's the name of the company that manufactures those pills for you?
A Nature's -- we haven't done it in so long, Nature's Herbs. No, I'm sorry, Nature's -- I can't remember.
Q If you can't remember, you can't remember.
A Nature's something.
Q Are they're in Long Island?
A They're on Long Island, yes.
Q Is that their primary basis, to manufacture --
A Yes.
Q -- pills and things like that?
A Yes.
Q Do you have any other business relationship with the company that manufactures

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these pills for you, other than the diet and sexual enhancer pills?
A No.
Q What's the name of your contact person there?
A Laurie. She just got married. I think her name is Brooks.
Q Does Source Pharmaceuticals do any other business other than selling the diet pills and sexual enhancer pills?
A No, sir.
Q From what outlets does Source Pharmaceuticals sell these products?
A The Appedrene is sold through our store and through our website as well. The Impulse is the same. We also do have a sports nutrition distributor that sells it for us, as well.
Q Who is that distributor?
A Europa Sports.
Q Where are they located?
A They have a couple of locations. Their main warehouse is in North Carolina.
Q Is that a national distributor?
A Yes.

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Q Who is your contact at Europa?
A Eric Allred.
Q A-L-L-R-E-D?
A I believe it's two Ls, yes.
Q Why do you use the name Body Source, why not just sell it under the S&L Vitamins name? Is there a reason why you decided to use that name? I'm sorry, Source Pharmaceuticals, I'm sorry.
A Just to kind of keep it tied in with Body Source, but also separated.
Q Source Pharmaceuticals is not a separate company?
A No.
Q Does Source Pharmaceuticals keep separate records of its sales?
A No.
Q Does Source Pharmaceuticals generate invoices for sales of products?
A We did, yes.
Q When did you have invoices for products?
A Europa Sports orders from us, few and far between. I really wish it was more. But it's been some time, so --
The Appedrene, they don't carry. The

Appedrene is sold only through us, through our store. So --
Q But I mean, if a sale is made, let's say on your Internet website for the Appedrene, does somehow it get credited in the ledger column for Source Pharmaceuticals as opposed to S&L Vitamins or is that all --
A It's all one corporation. It's just a separate d/b/a.
Q Do you use Source Pharmaceuticals for any other purposes other than selling the diet or the sexual enhancer pills?
A No. We have used the invoicing software before, but that's it.
Q What do you mean invoicing, do you have a special software for Source that's not set up for --
A Well, we did have an invoicing software so that when Europa places an order, we can generate an invoice for them.
Q Do they require an invoice?
A No.
Q Do you generate invoices generally? If I order something on the Internet, you send me an

invoice with my --
A Yes.
Q What does the invoice say on that? If I'm John Q. customer, what does my invoice show?
A Top left would have your reference number, your order number. Below that, it would say order to Supple Net, dash, again, your order number.
Below that it would have the ship to, the bill to, method of payment and the products you ordered with pricing.
Q Is your company's name on the invoice at anyplace?
A The website address is, yes.
Q Does it say Body Source or does it say S&L Vitamins on the invoice?
A No. I believe it says THESUPPLENET.COM.
Q Is Drills and Taps S&L Vitamins' website?
A Yes.
MR. COLEMAN: Is that spelled out in three word, Drills and Taps?
THE WITNESS: It's all one word for the AOL purposes.

Q D-R-I-L-L-S, A-N-D, T-A-P-S, .COM?
A That's correct.
Q What is the business of Drills and Taps?
A Drop shipping. We had the website produced, again, from Desktop. We take orders from the customers who buy the stuff online. And then we fax orders to a warehouse who then drop ships it for us.
Q So you're still selling it, but you don't have any inventory --
A I don't touch Drills.
Q Let me see if I understand this. Your website offers all these Drills and Taps for sale?
A Right.
Q A customer can go on the website and purchase a drill?
A Yes.
Q You receive the order?
A Correct.
Q And is that the same computer system and does it all come to the same place as S&L Vitamins tanning lotion orders?
A Yes.

Q Then somehow you transmit that order to a warehouse who drop ships it directly to the customer?
A That's right.
Q You purchase the product?
A And then the warehouse bills us.
Q How long have you been operating the Drills and Taps website?
A Just over a year. Maybe a year and a half.
Q What sparked the interest in Drills and Taps? That's an odd combination with dietary supplements and tanning lotions?
A It was another contact that we were able to purchase a product, albeit a completely different type of a product than what we were used to selling. We were able to buy it at a good price and offer it to the customer at a good price as well.
Q Do you have any overhead associated with that?
A Zero. Well, the price of posting the website.
Q But other than that, you don't have to

shell out any cash for inventory or anything like that?
A No. No.
Q All right. So Drills and Taps is part of S&L Vitamins and your percentage of ownership is -- or the percentage ownership of, I guess, that business would be 50 percent you and 50 percent Laura Fanning?
A That's right.
Q Does Larry Sagarin have an interest in that business?
A Just the same as he does with THESUPPLENET.COM. It also comes into the same, for the same general purpose. He does have more of the knowledge with Drills and Taps than anybody else.
MR. MATTHEWS: Mark this as Exhibit 6.
(Mercadante Exhibit 6, printout of the Drills and Taps website, marked for identification, as of this date.)
Q I've handed you what's been marked as deposition Exhibit 6. Is this a printout of the Drills and Taps website?
A It is.

Q At the top right-hand corner it gives an address of 204a North Fehr Way, Bay Shore, New York 11706.
A That's correct.
Q What's located at that address?
A That's actually Larry's father's business. He's in the tool business. Originally when Drills and Taps came about, it was supposed to be a partnership between him and his father.
Where his father -- I don't know exactly what happened there, but Larry asked me to help him with it instead of his father.
In the meantime, changing of the address is an HTML situation that we don't know how to change. And that's -- just didn't get around to changing it.
Q Well look at the address at the bottom of the page, isn't that the same as updating or amending a web page?
A No.
Q It's not, why not?
A That's a separate part as for a Yahoo store, particular parts of the pages need an HTML code to edit and that spot there and the spot on

the top right that you're speaking of are points that we don't know how to do.
Q So when this website was designed, is it your testimony that it was designed to be operated by Larry Sagarin and his father at this 204a North Fehr Way address?
A That's right.
Q Instead, Larry brought this business opportunity to S&L Vitamins and this is another component of S&L today?
A That's right.
Q Is there any other aspect of S&L Vitamins' business that we haven't talked about other than the Internet websites, there's three, correct?
A Three websites, yes.
Q Did you have any other websites?
A Well, we did have an website for IMPULSERX.COM, but that's been gone.
Q Is there any other product line that you sell that we haven't just at least touched upon today in some way?
A No.
Q The phone number, (631) 225-2639, is

that S&L Vitamins' phone?
A That is our phone number.
Q Why did you use that phone number?
A I'm sorry.
Q That's okay.
MR. MATTHEWS: Off the record.
(A discussion was held off the record.)
MR. MATTHEWS: Read it back.
(The requested portion was read back.)
A That's our phone number. I wouldn't use your phone number.
Q But your testimony was that you were going to -- Larry and his father were going to go into this business?
A Right.
Q And they didn't, and you said that is the reason why the wrong address is there because you couldn't change it?
A That's right.
Q So wouldn't you have used -- let me finish my question, wouldn't you have used Larry's father's business phone number?
A Originally, it was there. We had contacted Desktop Solutions to change that for

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us. It was an oversight that they didn't change the address. To be completely honest, it's just not worth the hassle or the cost to have them go over and change the address.
Q What does it cost to change the address?
A Probably a couple of hundred bucks, hourly fee. It's not that important.
Q With respect to modification of websites, what are you and Mr. Sagarin able to do and what do you have to call Desktop Solutions to perform?
A Anything that goes along with the actual scheme of the look of the page, including borders, any text on borders, any images on borders, anything that's listed at the bottom of each page or anywhere on each page is all HTML code.
Content, such as the text that's written in the middle, we can do that. Categories, we can do that. Items and other subcategories within those categories, we can do.
Q So if you wanted to, under the drill category, if you wanted to add a new drill, you could go in and add that or remove one?

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A Right, yes.
Q Let me make sure I got my list right. S&L Vitamins Corp. Inc., it does business as Source Pharmaceuticals; it does business as THESUPPLENET.COM; you do business as BODYSOURCEONLINE.COM; you also do business at DRILLSANDTAPS.COM.
Is there any other name under which S&L Vitamins does business that I failed to mention?
A No.
Q Do you have another source lined up for your outdoor SPF products that you were obtaining from Plaza Sports?
A Not as of yet, but we plan to be trying.
Q So you intend to carry that going forward?
A Yes.
Q How long have you known Danny Sheehan?
A Late 2003, early 2004. I knew of him before that, but --
Q I forgot we talked about this this morning; is he a body builder, too?
A Are you going to see him personally?
Q I am going to see him at some point in

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time.
A Sort of. I guess from here up, he is. From here down, he's not. Danny has been into weightlifting, extensive weightlifting, not body building for competition, for quite some time.
Q How were you first introduced to Mr. Sheehan?
A Through Larry.
Q Was that in a business context of supplying his tanning salon with supplements or was it a social meeting?
A No. It was actually a business conversation as far as him supplying us with tanning lotions.
Q That was your first introduction?
A Yes.
Q You said you were actually supplying him supplements first --
MR. MATTHEWS: Listen to the whole question.
THE WITNESS: I know.
Q You said that you actually were supplying, S&L Vitamins was supplying Mr. Sheehan with supplements first before he ever provided

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tanning lotions?
A That's correct.
Q Before you decided to start selling tanning lotions on the Internet, did you do any type of research into tanning lotions in general?
A No.
Q Did you do any research about selling tanning lotions online?
A No.
Q Did anybody in your company do any research about tanning lotions or selling tanning lotions online prior to S&L Vitamins selling them?
A What type of research would you --
Q Any kind of research, talking to people, reading articles, getting on the Internet, looking at websites?
A Any time we post any new product, we always do search around just to get a feel for competitive prices to see if we can compete. If we can't compete, if we can't offer our customers a better price, then we don't do it.
Q Prior to agreeing to trade your supplements for tanning lotions with Mr. Sheehan,

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did you do any research on the Internet, look at pricing and see whether or not you could turn a profit?
A Prior to that?
Q Yes.
A No.
Q So if I remember right, Mr. Sagarin just came back with tanning lotions and said, here we are?
A I had the same look that you do.
MR. MATTHEWS: Let the record reflect two very handsome --
Q Once you received the tanning lotion and you're stuck with them and you have to sell them, what did do you as far as investigating how am I going to sell these? Did you go to websites? Did you call tanning salons? What did you do?
A No. We asked, again, you know, what do these things cost? What do they sell for so that we knew what price to offer it at. And then that was it.
Q What did he tell you? Did he give you a list as a retail price in salons, if you go to Internet, you can buy it cheaper, what kind of

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advice on pricing did he give you?
A It was a minimal amount of different items, so it was just this product costs this much, this product costs that much.
Q Did he give you any kind of proof of what he actually paid for it, so that you know what kind of actual value you were getting on that initial order?
A Not to me.
Q After that initial trade of products, which remind me again, what month and year that approximately occurred in?
A The initial trade with Danny?
Q Yes.
A Was late 2003.
Q Were there additional trades product for product or did you start buying, just taking cash and buying tanning lotions from Mr. Sheehan?
A We never took cash or gave cash. Again, everything was all company checks.
Q I didn't mean cash, I meant instead of trading goods for goods, after that initial swap of goods, did you begin purchasing products?
A Originally, Danny would pay us for the

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supplements because at that point we had no interest in the tanning lotions. He's the one that had the interest in supplements.
When he ran into a tough time, he gave us the lotions. And then from that point forward, I think we began buying from him more tanning lotion than he was buying supplements from us.
Q So there would be some cash plus maybe product going to Mr. Sheehan in return for tanning lotions?
A Checks plus product, yes.
Q Checks, yes. Did that ever change to where it became to just you writing him a check for lotions and Mr. Sheehan not buying any of the product you sold?
A More often than not.
Q So after the initial transaction between you and Mr. Sheehan's company, then the pricing was established that you will get the lotions at 20 percent for Australian Gold products or 10 percent for other manufacturer's products over cost?
A Correct.

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Q You testified earlier that the company purchased a van to pick up products. How many product pickups in a week occur?
A It depends on the season.
Q Let's do when it's in the tanning season?
A I don't really know. I don't know.
Q Well, was it weekly, it was more than once a week?
A Well, we generally try to do weekly orders for what we need for the week. So outside of that, I couldn't tell you anymore.
Q So at least once a week, you would go and pick up product?
A Sometimes two, sometimes three.
Q Were the orders large enough that you were required to have a van to fit them? Would they fit in a car?
A Well, you've seen the size of the Honda and the size of a Lexus IS, so some of those stock orders for the week, yes.
Q But I mean, the van was bought to be able to accommodate larger orders?
A Yes.

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Q How often do you place orders with Mr. Sheehan? And I'm talking from the beginning to today, and if it's changed, just tell me it's changed.
A I'm sure it has changed. But in speaking of the past let's say, year, I guess it's been a little bit more consistent. Sometimes once a week. Sometimes every other.
There have been times where it's two or three times a week. It completely varies. We don't overstock. We don't try to build inventory so much. We order what we need.
Q Your attorneys in this lawsuit have identified three suppliers, Plaza Sports, Danny Sheehan and John -- well, Danny Sheehan and I think it's John Tufarella?
A That's correct.
Q Both of which are employed by or own Yucatan?
A Correct.
Q My understanding was there really wasn't -- maybe a different location, but it was the same business; is that true?
A At a time, I'm not sure now, there were

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a couple of Yucatans, ownerships between them. I don't think they were all the same. I think they were different owners and different Yucatans.
Q Did you have a distinction -- I noticed some checks that you produced where sometimes they're written to Yucatan.
Sometimes they're written to Danny Sheehan and other times they were written to John Tufarella. Why the different payees on the check?
A However they asked me to make it out.
Q Did you always call the same place to place an order with Yucatan? Did you always call Danny or would you sometimes call Mr. Tufarella?
A Oh, yes, no, we split it up.
Q So you decide who to call?
A Yes.
Q Why would you do that?
A Like I said before, trying not to put all our eggs in one basket.
Q How did you get connected with Mr. Tufarella?
A Through Larry.
Q Was he also an acquaintance of Larry

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through body building? Do you know how they knew each other?
A That I really don't know. I don't know how they knew each other.
Q When were you first introduced to Mr. Tufarella?
A This is going back. Maybe spring of 2004.
Q By the way, Mr. Sheehan was the first purchase of tanning lotions you made, right?
A Yes.
Q And Mr. Sagarin introduced you to Mr. Tufarella?
A Yes.
Q What were the circumstances of that introduction?
A Here's his phone number, if you need something, call him.
Q Well, to go to a movie? I mean, for money?
A Here's his phone number, he wants to sell tanning lotions, call him.
Q Did Mr. Sheehan explain his relationship with Mr. Tufarella on a professional level?

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A To me?
Q Yes.
A No.
Q Did you have an understanding of how he and Mr. Sheehan were related, if at all?
A No.
Q But he also operated a Yucatan tanning salon?
A At a separate location, yes.
Q Where was that location?
A I believe it was Greenvale.
Q So that was in 2004. When was the first time you called and placed an order with Mr. Tufarella?
A I would assume the same time.
Q What were the terms of his sale of tanning lotions to you?
A Same thing as Danny.
Q Did you tell Mr. Tufarella what pricing Danny was giving you?
A What pricing -- yes, we told him that they were both getting the same 20 percent off.
Q And neither one of them fought for your business to give you a better right?

A Sure. John would kind of come back every once in awhile and say, hey, listen, I'll do 15 percent on this one or I'll do 10 percent on this one.
Q So it's advantageous for S&L Vitamins to use both of them because you might get a better deal if you --
A Not only because we can get a better deal. We never liked buying from one source whether it comes from sports nutrition products or tanning lotion. We just don't to that.
Q Why not from a business standpoint?
A Because we feel that the business we buy from can kind of strong-arm us, and say, if they're not going to buy from anybody else, I'll raise their price.
Q So this gives you leverage?
A It gives us good leverage and it also give us better relationships across the board, throughout the industry.
Q How did your transactions work with Mr. Tufarella as far as placing the order, from placing the order all the way through picking up the product?

A Again, phone call, phone it into him. Usually, John after he received the order, usually would deliver it to us.
Q Did he generate an invoice of products that he was selling to you?
A No. He didn't generate an invoice.
Q Did he show you his invoice from the distributor, so you could determine whether or not you were paying the correct amount to him as far as his markup?
A I believe so. Originally, I don't think that I was paying him originally. Originally, I'm not really sure if he was showing us the invoice or not. I wasn't paying him, I don't think.
Q At some point in time, did he show you the invoices?
A Yes.
Q He did?
A Yes.
Q Were you or S&L Vitamins identified on those invoices in any way?
A No.
Q How was Mr. Tufarella paid?

A Cash. I'm sorry, check. Everybody was all check.
Q S&L Vitamins' check?
A Yes.
Q Where would Mr. Tufarella deliver the products when he delivered the products to you?
A When he delivered it to us, he delivered to our location at 308 East Montauk Highway.
Q Did he ever deliver it to any other location?
A Sometimes he brought it home and I actually picked it up at his house. This was back when I was at the address I told you about in Hauppauge. He lived in Hauppauge also.
Q Did you guys ever meet at neutral locations or halfway in between to deliver the products?
A Not that I can remember.
Q Were there any certain types of Australian Gold, Swedish Beauty or Caribbean Gold products that you would not order from Mr. Tufarella?
A No.
Q So the same type of orders you placed

with Mr. Sheehan, you placed with Mr. Tufarella?
A Yes.
Q What about orders placed in Midnight Sun, that was the other supplier identified by you in this lawsuit, how did those orders work?
A Those were faxed to Dominic.
Q What did you fax to him?
A We would print out the pages from our website, the item pages from our website and put numbers next to the items of the quantities that we needed and faxed it over.
Q Then what happened next as far as getting the order?
A 2 or 3 days later, Larry would get a phone call, the stuff was in. Dominic was a little bit different with payment as far as we saw the invoice there. He gets 20 percent on everything, saw the total, times it by 1.2, write a check right there and go.
Q No paperwork back to you, no receipt?
A No.
Q Did you order any of the Australian Gold, Swedish Beauty or Caribbean Gold product with Dominic Bartone?

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A Yes.
Q How were you introduced to Dominic Bartone?
A Never met him a day in my life.
Q Did you place any orders with Mr. Bartone?
A I faxed orders to him.
Q Why did you do it by fax, why not by telephone?
A That was the easiest way.
Q You've identified four different suppliers. Can you break down for me the percentage of the business with each of those suppliers where you bought most of it, and just kind of rank them 1 through 4?
A I can't. What I can tell you is, Danny is the person that I use most often. John, at one point, John we used more often than Danny because sometimes he would fight for a discount and he would deliver it. But Danny is the guy that I speak to mostly.
Q So it would be Danny, John and then Dominic Bartone of Midnight Sun?
A Correct.

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Q And the last would be Plaza Sports?
A Plaza.
Q Has S&L Vitamins ever bought products from any other person or entity other than the four entities we've just discussed?
A Australian Gold products?
Q Yes.
A No.
Q Swedish Beauty products, the same question?
A No.
Q And Caribbean Gold, same question?
A No.
Q Have you bought any other tanning lotions from any other entity other than these four?
A Yes.
Q Who are those?
A We do buy some of the lotions direct.
Q From the distributor or --
A From the manufacturer, some people do like their stuff being sold on the Internet.
MR. COLEMAN: Chris, I'm going to ask you how this line of questioning will lead to

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the discovery of possibly relevant evidence?
MR. MATTHEWS: Sure. If he has other sources where he's buying other tanning lotions, I have a right to confirm that he's only buying other tanning lotion says and not Australian Gold.
For example, if he's buying from a distributor who sells 20 different lotions, I have a right to know that so I can call that distributor and say, is Mr. Mercadante only buying these lotions and not Australian Gold?
MR. COLEMAN: It's an answer.
Q And your question was -- just tell me the manufactures you buy directly from.
A Millennium, Radiance, Hot Sauce, Ultimate. I'm trying to think.
Q Do you buy from any distributors, independent distributors, who may sell many manufacturer's lotions?
A No.
Q No business relationships with any independent distributors, if you will?
A For tanning lotions, no.
Q What percentage of the markup do you put

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on your products?
A Well, that varies. Basically, we determine selling price based on competitors. It certainly varies between supplements and tanning lotions tremendously.
I would say the average margin, I would imagine, is about maybe 30 percent on the lotions, 25 to 30 percent.
Q How do you figure that? You're saying you market it at 25 to 30 percent over what your supplier sells it to you?
A We make about a 25 to 30 percent margin, yes.
Q So you're saying gross profit?
A Gross profit margin, yes.
Q How does that vary from the supplements?
A 10 to 15 percent.
Q So tanning lotions are more profitable?
A Yes, they are.
Q Are you still ordering from Mr. Tufarella?
A Not in awhile, no.
Q Is that by your choice or has he refused to deal with you?

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A No. Neither. He's willing to accept orders. His salon has closed down, but his distributors had told him that they would still ship to his house.

MR. COLEMAN: Let's take a break.

(A recess was taken.)

MR. MATTHEWS: Mark this as Exhibit 7.

(Mercadante Exhibit 7, printout, marked for identification, as of this date.)

Q Mr. Mercadante, I'm going to hand you what's been marked as Exhibit 7. I'll represent to you that this is a printout of a portion of THESUPPLENET.COM website on April 19, 2004.

Does that look like your website?

A At that point, yes.

Q I want to ask you a couple of questions about this. Again, you got up there, two New York locations on the top right-hand corner?

A Yes.

Q Did you ever consider the fact that if someone's closer to Miller Place than Lindenhurst, that your website, S&L Vitamins, might actually be diverting business away from S&L Vitamins to a competitor, although a business

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partner, it would be sales that you would not receive credit for?

A I think you said the magic word, it's business partner and I want the best for him at his location, as well.

I'm happy with the way that our business is going and if this can help to generate something to their storefront over there, then that's great.

Q The phone number listed over there, (631) 225-BODY, where does that ring?

A That's our number at Lindenhurst.

Q Does Miller Place have the same phone number?

A No.

Q Let's look at the products. These are Australian Gold products, correct?

A Yes.

Q The first one says, well, let's go down to Blazin', it says, Intense Formula With Tingle Bronzer Hemp. Where did you get the product descriptions?

A Off the bottle.

Q Where did you get the retail price?

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A That I don't remember. I don't remember.

Q Did you put the retail price on there or did Mr. Sagarin?

A I don't remember. It's 2004. I don't know.

Q With respect to today's website, where do you get the retail price?

A From catalogs.

Q Distributor catalogs or Australian Gold catalogs?

A We have a catalog that Danny would give to us wherever he gets them from and that's where we get our new prices from.

Q Did he ever give you a CD with images on it of products?

A No.

Q Where did you get the pictures that are depicted here in Exhibit 7?

A We take our own pictures.

Q These products, that's true at all times, Mr. Mercadante?

A Supplements, no. Other lotion lines, no. Certain lotion lines, it's true every time.

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Q If you look down at Bronzing Fire Glaze, the picture is small, but I'll represent to you that there's a picture of a box in a bottle. It's on the first page.

A Yes.

Q I believe or it's my client's belief that that's their picture. Are you disputing that?

A Sure.

Q Do you still have copies of those photographs that you've taken back from 2004?

A No.

Q Who would have taken the photographs of this picture?

A We have photographers do it.

Q Who would the photographer have been that took this in 2004?

A I family member of Larry is a photographer, so --

Q What's that person's name?

A I'm not sure actually. He takes it to wherever, it gets e-mail to us and we plug it in.

Q So he e-mails the pictures back via your computer?

A Correct.
Q You're saying you've deleted these pictures since this time?
A Sure.
Q Why?
A No sense in saving the e-mail of the picture when it's already on the website.
Q At this time, April 2004 in Exhibit 7, you weren't putting the BODYSOURCEONLINE logo or name across a product, correct?
A Correct.
Q Were you altering the products in any way as far as their appearance, the pictures by adding anything to them?
A I don't understand what you mean.
Q Your testimony is, you took a photograph of the bottle and placed it on the Internet?
A Right.
Q Did you manipulate that photograph in any other way?
A Well, I didn't take the picture myself, it was a photographer. However, they do it to make it a clearer picture, to make it look nicer, whatever photo softwares they use, I don't know.

Q Look back at Blazin' again.
A Okay.
Q There looks to be some text superimposed right across the -- right above the bottle cap. Do you see that?
A Yes.
Q What's that say?
A I don't know.
Q Could that say new?
A It could.
Q But it's your testimony that whatever it says there, you guys created it, you didn't take this from something that Australian Gold had?
A Never took a picture from Australian Gold.
Q Did you take it from a catalog? I'm not saying you took it directly from a website, but did you borrow a picture from a catalog?
A No.
Q Did you ever scan a picture onto the system?
A No.
Q It's your testimony that at all times on THESUPPLENET.COM and BODYSOURCEONLINE.COM every

picture for Australian Gold was a picture taken by you or someone hired by you?
A Correct.
Q Turn to the last page, 3 of 3.
A Okay.
Q Do you see the SPF 8, 15 and 30 products?
A Yes.
Q Why did you take pictures of these bottles in that?
A Originally, we had them listed as just SPF. And then when you go on to the item page before you place the order, there's a dropdown as to whether you can choose SPF 8 as an option, 15 as an option or 30 as an option.
So that originally was one item, but then we realized the price change with the SPF 30, we broke it up into pieces, but we never had a new picture taken.
Q So you're saying those three bottles represent an SPF 8, 15 and 30?
A That's correct.
Q Do you know if any manipulation was done of the photograph to kind of white out the area

behind these products?
In other words, it looks like the products are almost sitting in space rather than sitting on a table or, I guess, a backdrop; do you know if anything was done?
A I really don't know. We had a professional photographer do it for a reason.
Q Would Mr. Sagarin know the name of the professional photographer?
A Yes. It's his family member. I don't know who it was.
MR. MATTHEWS: Mark this as Exhibit 8.
(Mercadante Exhibit 8, counterclaim, marked for identification, as of this date.)
Q Mr. Mercadante, I put Exhibit 8 in front of you and I'll also represent that this was Exhibit E in the counterclaim filed by Australian Gold.
A Okay.
Q If you look at the right-hand side of the page, it says, sponsor results?
A Yes.
Q It says, buy discount tanning lotion here, Australian Gold, Swedish Beauty, Designer

Skin, Supre. And then it goes on, but below it says, THESUPPLENET.COM is what I believe it continues to say?
A I would believe that's what it says, yes.
Q As of this time as of April 25, 2005, was your business paying to be a sponsored result on Yahoo for the Australian Gold?
A Again, as I said before, I don't know. I didn't handle the sponsor things, I wouldn't know.
Q Mr. Sagarin would be the person who would know?
A Yes.
Q Would there be any other person besides Mr. Sagarin who could possibly know what you did with respect to the pay-per-click advertising on Yahoo or anywhere else?
A Not to my knowledge. I also see some other people selling Australian Gold on this page as well.
Q Absolutely, in fact, there's one that's Australian Gold Coins Bullion, but I just want to make sure that I don't get to the end of

discovery and Mr. Sagarin says, Mr. Mr. Mercadante knows, so I just want to make sure we're clear?
A AMAZON.COM, too.
Q Look at the Australian Gold product here, it says Cheeky Brown, Australian Gold tanning lotion.
The text below that, the number 1 tanning lotion now with bronzer, get dark fast with Cheeky Brown advanced formula with natural bronzers. Who wrote that text?
A I don't know. That says World Class Nutrition underneath it.
Q So that is not your site?
A That's not my site. That's the World Class Nutrition I brought up to you earlier.
Q Okay. Do you have an understanding of what the pay per click or the sponsored result service is?
A Slight.
Q What's your understanding of that service?
A On certain search engines or websites where people go to find where to buy certain

products, the people who are advertising that particular product actually pay for that placement.
Q If I sell Cadillacs, Cadillac automobiles online, you would pay with respect to the word Cadillac, if you wanted to be identified, have your website identified at the top of the search ranking?
A If you were the one selling the Cadillac, I believe that's the way. That's the way some of them work, I think. Others are just spidering, too.
Q What's spidering?
A I think that has to do with -- it's a search engine that just branches out and finds the information across the Internet. It has nothing to do with paying or anything like that.
Q Do you do that?
A No.
Q You don't have to pay to be part of spidering?
A No. It's something that is done within the website where the spider will pick it up and I don't understand.

Q Is that the medatags, the HTML source code?
A I don't know. It's got something to do that's more advanced than Yahoo manager, so I have no idea.
Q Have you given Desktop Solutions any instructions about securing placement or advertising on the Internet with respect to tanning lotions?
A Again, I don't handle anything that has to do with placements. Whether or not a conversation like that has happened, I don't know.
Q Mr. Sagarin would be responsible for Internet advertising and marketing issues?
A Yes.
Q No one else, to your knowledge?
A No. We're a three-man band.
Q Mr. Neirman, you and Mr. Sagarin?
A Right.
MR. MATTHEWS: Mark this as Exhibit 9.
(Mercadante Exhibit 9, complaint, marked for identification, as of this date.)
Q I put Exhibit 9 in front of you and

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again this was Exhibit F to our complaint. This shows here and if you see in the search term, it shows, I've typed in Swedish Beauty. And then under sponsor results, would you agree with me that THESUPPLENET.COM is the first listed website?
A On the right-hand side, you mean?
Q Yes.
A Yes.
Q Is it your understanding that with a sponsored result, if you type in Swedish Beauty, if you pay enough money, at least in this -- as of this date, your website is going to be the first result listed on the search?
A I don't know necessarily if that's the case anymore because I know Yahoo, especially Yahoo shopping has changed their whole way about how they do these things.
It's not necessarily pay per click. It is who is a Yahoo store. Who is a better customer for Yahoo as far as where the placements are.
It has nothing do with, I'm paying X amount of dollars or cents to be in number 1. It

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could be ratings. It could be anything, I think.
Q Are you familiar with a company OVERTURE.COM?
A Sure.
Q What is OVERTURE.COM or what was it?
A It's another pay-per-click company.
Q Do you have any relationship with OVERTURE.COM, your business, S&L Vitamins?
A Yes. We've used them before.
Q Do you currently use OVERTURE.COM?
A I'm not really sure. I know we're trying to cut back on a lot of it because it's just too costly.
Q Did you ever bid or pay for placement with respect to the term Australian Gold?
A I have no idea, I don't handle that.
Q Mr. Sagarin again?
A Yes.
Q I assume you wouldn't know about Swedish Beauty either?
A Right.
MR. MATTHEWS: Mark this as Exhibit 10.
(Mercadante Exhibit 10, website printout, marked for identification, as of

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this date.)
Q Exhibit 10 is in front of you now. I'll represent that this is a website printout from BODYSOURCEONLINE.COM or THESUPPLENET.COM as of February 27, 2006.
Does this look like a true and accurate depiction of your website as of or around that date?
A Yes.
Q If you flip through this, this is the Australian Gold products. Are these all of the Australian Gold products offered for sale by THESUPPLENET.COM or S&L Vitamins, I guess to be more precise?
A I believe so.
Q Are there any products that you offer for sale that aren't on your website?
A No.
Q And all the products that are displayed on your website are offered for sale by S&L Vitamins?
A Correct.
Q I want to ask you about the pictures here, but I'll give you a better exhibit in a

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minute. Let me ask you one question on the product.
So I understand your pricing structure, how you're buying it, how you're displaying it and your profit margin, let's take the Crystal product?
A Okay.
Q Again, this says it has a retail price of $100.
A Right.
Q And your price, on your website for $55. Based upon the percentages you gave me, can you tell me what you would pay this for?
A Sure.
Q What your profit is?
A Sure. If retail price is $100, then normal salon cost is $50. I believe that's their pricing structure. I know some distributors give 45 percent off salon costs, 45 percent off $50.
Q So wait. Some distributors sell to salons at 45 percent off of salon cost?
A Right. So that $50 at the salon cost would come out to $27.50, if my math is correct. And then we take that $27.50 and we pay Danny 20

percent, so we pay something like $34 or something like that.

And then all the tanning salons down the street are probably what should be paying the same as Danny and they're selling for $100. So I don't know who's right and who's wrong.

Q So you take $27.50 times ---

A Well, $27.50 is 45 off of 50, right?

Q But the price Mr. Sheehan or your other suppliers would sell --

A $27.50 times 1.2.

Q Which is $33?

A Right.

Q And then you sell it for $55, so you're making $22 a bottle?

A Okay.

Q Does that sound right?

A Yes.

Q So that's a little bit higher than the 30 percent?

A Oh, every breakdown on every item is going to be different. We can go to Body Kisses and figure it out.

Q That's what I want to do because I want

to understand --

A When I told you the 25, 30 percent on tanning lotion, I didn't -- that's everything.

Q What do you mean, that's everything?

A Well, we sell other tanning lotions, other than Australian Gold.

Q That's a good point. What's your profit margin on Australian Gold tanning lotions?

A Again, it varies. It does vary because sometimes our suppliers will buy things at 45 off. Sometimes 40. Sometimes 35 off. We always pay them 20 percent off.

Q But for Crystal, you know you're getting that at 45 percent off salon cost?

A If they were to buy it from that distributor that's giving them the 45 percent off. If they were to buy it from a distributor that gave them 35 percent off, then it is what it is.

Q Do you control where Mr. Sheehan buys?

A No.

Q Do you ask him, hey, only deal with this distributor because he's going to give you a better price, so it's more savings to me?

A No. Sometimes I might say to him, I need it fast.

Q And what does that mean, does that limit his sources or his outlets?

A Probably so, yes.

Q Have you had conversations with him, and say, hey I want you to buy it through distributor X?

A No.

Q Because it's going to be cheaper?

A No.

Q Why not?

A I may ask him every once in awhile and say, Danny, can you do something with the price, ask if he can lower it because I'm not going to say, go to this guy, go to that guy because I don't know all the guys.

Q The formula for all Australian Gold, Swedish Beauty and Caribbean Gold products is going to be the same, and that is, whatever distributor -- I'm sorry, whatever salon cost is to Mr. Sheehan or whomever else is supplying you, times 1.2 and now it's times 1.1 because you've loaned Mr. Sheehan $7,500?

A Correct.

Q So if I take another product and again, do you have any records, which would show what percentage discount Mr. Sheehan or another one of your suppliers is getting?

A No.

Q So you can't tell me for sure on this product, I know I only got it at 40 percent off of salon?

A I couldn't say that every single time. I mean, sometimes they're sales.

Q Do you ever get more of a discount than 45 percent off salon cost?

A No, not that I'm aware of. But there might have been, whatever the discount was, I'm not sure, but we've seen buy 9 get 3 free, buy 10, get 2 free, that type of stuff.

Our pricing structure as for what we sell it for is usually with Australian Gold products is -- this season we have it marked at 45 percent off of retail price.

That's the way we do it. Sometimes we might buy it for less. Sometimes --

Q So you may make more profit because of

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what you bought it for, but your basic pricing structure is to take retail and multiply it by 1.55?
A Yes. And that's what we sell it for.
MR. MATTHEWS: Mark this as Exhibit 11.
(Mercadante Exhibit 11, website printout, marked for identification, as of this date.)
Q I'm handing you Exhibit 11, which is another printout from your website from earlier this week. I think it's just a general page regarding tanning?
A This is our tanning lotions page, correct.
Q This is a page, if I'm at your home page, I click on tanning lotions and this is what's displayed, it showed all your lotions that you carry, correct?
A Yes, sir.
Q Lock at the language on page 4 of 5 of this exhibit.
A Okay.
Q Who is the author of this language? It says, be a smart tanner, different lotions for

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different tans?
A We just started doing business with a search engine optimizer, who has been putting content onto our site.
Q What's the name of the search engine optimizer?
A The company RFI Media, Robert Frank Indian.
Q Are they associated with Overture?
A Oh, no. No, they're a private company.
Q What is the nature of their business, what do they do?
A They just try to figure out ways on how we can get better in-depth with the spidering that we spoke of before.
Q So the goal of this company is to make sure your website reaches the consumers that are searching for information?
A Yes.
Q About tanning lotions or any products that you sell?
A Correct.
Q Spider, again, searches the content of the website; is that what you're saying?

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A As far as I know. I don't really have much knowledge into that, that's why we hired somebody else to do it.
Q So RFI Media put on this, be a smart tanner for different lotions for different tans?
A Correct.
Q Who authored these paragraphs?
A I have no idea.
Q I take it, you didn't?
A Yes.
Q Did you review this language before it was put on?
A It was e-mailed to us to review beforehand. Larry or I both review it.
Q RFI e-mailed it to you to review?
A Correct.
Q When did this language go up on your website?
A We only started doing business with them for maybe 2 or 3 months.
Q So, what, December of '05, January of 06?
A More December '05, I would think.
Q Was any of this language added because

Mercadante 185

of this lawsuit and issue about training that Australian Gold?
A Absolutely it had nothing to do with that. As far as the training that Australian Gold does, I really have no opinion on that. It has nothing do with that.
This has everything to do with the spidering that I was explaining to you before in order for us to try to get away from the companies like Overture and the pay per clicks because it's way too costly.
From what we're told from people who do this stuff for a living, content and spidering is much more effective.
Q How does being a smart tanner and people have different skin types, how does that plug into your website to more people, if you know?
A It's just information and having information and new content posted on web pages will help to get the spiders to see your site.
Q But you don't view this language here as an attempt to train your consumers on tanning lotions?
A Absolutely not. We never said that we

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train anybody.

MR. MATTHEWS: Mark this as Exhibit 12.

(Mercadante Exhibit 12, website printout, marked for identification, as of this date.)

Q I put Exhibit 12 in front of you. Again, is this a true and accurate representation of a portion of your website, THESUPPLENET.COM?

A Yes, sir.

Q The second page has a statement that says, tanning lotion disclaimer?

A Yes.

Q Who authored that?

A I don't really remember. I think it was a conglomerate of a few of us.

Q And who would that include?

A Myself, Larry, under the supervision of our counsel.

Q When was this disclaimer placed on your website?

A I don't know. It's been there, I don't know.

Q Was there any certain event that triggered the placement of the disclaimer on your

Mercadante 187

website?

A If anything, I would probably have to say the initial cease and desist letter. We want customers to know that, A, we are not affiliated with any of the manufactures. We are not the manufactures, we don't try to mislead anybody.

Q This doesn't appear on every page, correct?

A Every single page.

Q But you have to click on to read the full disclaimer text, correct?

A That is correct.

Q It says, all trademarks or registered trademarks are the property of the respective owners. What does that mean?

A I don't know.

Q Anywhere do you identify that Australian Gold is the owner of the Australian Gold trademarks or the trademarks associated with their products that you offer for sale?

A I'm sorry, I don't understand.

Q Is there anywhere on S&L Vitamins' website where you state that Australian Gold owns all the trademarks to the Australian Gold name

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and its brands?

A All trademarks and registered trademarks are the property of their respective owners. That goes for Australian Gold and anybody else.

Q But you don't anywhere state what trademarks Australian Gold owns?

A No.

MR. MATTHEWS: Mark this as Exhibit 13.

(Mercadante Exhibit 13, website printout, marked for identification, as of this date.)

Q Mr. Mercadante, I've handed you what's been marked as Exhibit 13.

A Yes, sir.

Q Is this a true and correct copy of S&L Vitamins' website with respect to the product Body Kisses?

A Correct.

Q And in this Exhibit 13, this would be the -- I think was a couple of exhibits back where you listed all your products, this is the specific page for specific products?

A Yes. This is an item page.

Q What's it called, an item page?

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A Item page, yes.

Q Let's look at the last page here. There's an enlarged photograph.

A Okay.

Q Is that a photograph taken by S&L Vitamins?

A Yes.

Q And was this done by the photographer friend of Larry Sagarin?

A Yes.

Q No one else has taken pictures of it, but Mr. Sagarin's friend for your website?

A No.

Q Across the top, it says, BODYSOURCEONLINE.COM and then there's a little logo, it says, Body Source inside a triangle?

A Right.

Q Who placed those over the picture?

A The photographer.

Q Why are they placed over the picture, any reason?

A Just to show that they are our pictures.

Q Okay.

A Our pictures before the templates came

Mercadante 190

up there, we felt were popping up on competitors' websites. That's why we put a template on there to try and prevent that.
Q It says all rights reserved at the bottom. What do you mean by that?
A I don't know.
Q Who placed that there?
A The photographer.
Q Have you ever requested Australian Gold for permission to sell any of its products on the Internet?
A No.
Q Do you believe you've ever received any permission from Australian Gold to sell any of its products on the Internet?
A No. We didn't feel that we needed permission.
Q Do you contend that Australian Gold's granted you any license to use any of its trademarks or copyrights?
MR. COLEMAN: Object to the form. You can answer.
A Do I believe that they have, no, I don't.

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Q On page 2 of 3, there's a description of Body Kisses. Did you write that?
A That text was typed from what was on the bottle.
Q It wasn't taken out of any catalog?
A No. No. We type our text from the bottle.
MR. MATTHEWS: Mark this as Exhibit 14.
(Mercadante Exhibit 14, website printout, marked for identification, as of this date.)
Q I put Exhibit 14 in front of you. Does Exhibit 14 reflect THESUPPLENET.COM website as of February 27, 2006 with respect to the Swedish Beauty products that are offered for sale?
A Yes.
Q Your pricing on Swedish Beauty, is that the same as Australian Gold as far as your markups and your cost?
A Yes.
Q Does THESUPPLENET.COM also sell Caribbean Gold tanning lotions?
A Yes.
MR. MATTHEWS: Mark this as Exhibit 15.

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(Mercadante Exhibit 15, website printout, marked for identification, as of this date.)
Q Is Exhibit 15 a true and correct copy of the Caribbean Gold products that --
MR. COLEMAN: Go off the record for a second.
(A discussion was held off the record.)
Q Exhibit 15, is that a true and correct representation of S&L Vitamins' website with respect to the Caribbean Gold products it offers for sale?
A Yes, it is.
Q I think you testified earlier, weren't sure what you were doing with OVERTURE.COM right now?
A Yes. I know that we're trying to get away from pay per clicks, I'm not sure if it's active or not. I don't know.
MR. MATTHEWS: Mark this as Exhibit 16.
(Mercadante Exhibit 16, website printout, marked for identification, as of this date.)
Q Before you is Exhibit 16. I typed in

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the word Swedish Beauty on a search term with OVERTURE.COM. Do you see your website on there anywhere, S&L Vitamins' website?
A Amidst of many, yes, I do.
Q It's the fourth one listed; is that correct?
A Yes.
Q Who selects the text that says, discounts Swedish Beauty tanning lotion, is that something you do --
A No.
Q -- or Mr. Sagarin, someone at S&L Vitamins?
A I can't answer that. I don't know. I have no knowledge on how to work -- is this from Overture? Yes, it is. I don't know how it works.
Q It says, advertiser's max bid. Do you know that that means?
A Do I take an educated guess?
Q No. If you know the answer.
A Okay. No.
Q So your answer is, you don't know?
A Right.

Q I'd have to ask Mr. Sagarin on that?
A Yes.
MR. MATTHEWS: Mark this as Exhibit 17.
(Mercadante Exhibit 17, website printout, marked for identification, as of this date.)
Q You got Exhibit 17 before you and this is also an OVERTURE.COM website with the word Australian Gold typed in.
By the way, are you familiar with the search tools on Overture, how to search in to type in key words or find out if anybody is bidding on those key words?
A If I tried to, I could probably figure it out, but it's not part of my job. I don't do it.
Q So you've never done that before?
A No.
Q And it appears that THESUPPLENET.COM is number 3 on the list?
A Again, among the midst of many.
Q Do you have an understanding on the ranking what that means? Do you know if that means you'll be number 3 on all sponsored search

results?
A I would think that you would be number 3 under the term that you typed in.
Q Your max bid on this is 40 cents, as Swedish Beauty and Exhibit 16 was 30 cents. Is there any reason why the bid is higher for Australian Gold?
A I don't know.
Q Is Australian Gold a better seller than Swedish Beauty?
A Yes.
Q What percentage of your tanning lotion sales would you say are Australian Gold tanning lotions?
A I'm sorry?
Q I want to distinguish Australian Gold versus Swedish Beauty at this time, but what percentage would you say are Australian Gold?
A I don't know.
Q Can you give me a ballpark?
A Is that necessary? A ballpark, I don't know.
MR. MATTHEWS: That's fair.
A It could be far off, but at this point

in the game, this season right now, the way it's going because there are just way so much more competition, maybe 25 percent of all lotion sales is Australian Gold. I'm going to guess.
Q What about Swedish Beauty?
A 10, 5.
Q After Australian Gold, is Swedish Beauty your next biggest seller?
A No.
Q Is Australian Gold your number one seller of tanning lotions?
A It's close. It's close. I'm not totally positive.
Q Who would be its closest competitor?
A I will not answer that.
Q Why not?
A Because we're in litigation with other companies and I know you guys speak with each other.
Q Well you're obligated to answer who your next closest --
MR. COLEMAN: You have to answer. If the other guys ask you at the other deposition, then you'll answer them there.

Don't sweat that. We'll worry about that.
A Designer Skin is a very good seller for us.
Q Is there anyone else other than Australian Gold, Swedish Beauty, Designer Skin that you would consider to be a big seller for you?
A We don't really try to concentrate on only one manufacturer. We like to offer our customers a wide variety of choices. And we like to sell everything. We don't like to carry one product and have it sit on the shelf. We want everything to sell just as well.
Q What would happen to your business if you could no longer carry Australian Gold and Swedish Beauty tanning lotions?
A I would say that we would certainly have to redirect, refocus, I would think. Probably would not leave the tanning lotion industry at this point.
We built up a very good clientele of customers who enjoy doing business with us, and enjoy saving money with us as opposed to buying it at salons and I think that there's a

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difference between Australian Gold customer and an Internet shopper.

And if, for some reason, we do not carry Australian Gold anymore in the future, we hope that some of those customers will continue to buy something else. There's other lines.

Q Would this put you out of business if you couldn't sell Australian Gold or Swedish Beauty?

A It wouldn't make it fun.

Q But would it put you out of business?

A That would have to be a business decision at that time. It's not only Australian Gold that brings us to this table. It's the other people that we mentioned that we are in litigation with, as well.

So if we do lose a group of different manufactures, that would be close to putting us out of business.

Q So it's if everybody prevailed and the court said you couldn't sell these tanning lotions, that's what would -- it's a combination of California Tan, Australian Gold?

A We've been in business for a very, very

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long time before we started selling tanning lotion. We're not solely riding the tanning lotion coattails, so to speak. We carry 90-something brands.

Q Have you had any discussions about discontinuing tanning lotion sales?

A No.

Q That's not in your immediate plans anyway?

A No.

Q Have you ever seen a copy of Australian Gold's distributor agreement?

A No.

Q Did you review the counterclaims that Australian Gold had filed?

A Somewhat, yes.

Q Did you read the exhibits that were included?

A I looked through them when they were first issued. I don't remember the exact.

Q But your testimony is, you had knowledge that there were contracts in place and a distribution system in place sometime in 2004 when you received the cease and desist letter

Mercadante 200

from Australian Gold?

A Correct.

Q Who received that letter, was that you or Larry Sagarin or someone else?

A I don't remember. It was sent to our store. I don't know who opened it. I don't know.

MR. MATTHEWS: Mark this as Exhibit 18.

(Mercadante Exhibit 18, complaint, marked for identification, as of this date.).

Q But at some point in time, you did read that cease and desist letter that was sent in 2004?

A The cease and desist letter, absolutely, I read that, yes.

Q Exhibit 18 is the lawsuit that your company S&L Vitamins filed against us, Australian Gold?

A It's almost a year ago today.

Q I want you to look at the first exhibit to this complaint. I think it's a January 15, 2004 letter to Body Source?

A I'm sorry, where am I looking?

Q The first exhibit to the complaint after

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the complaint ends, I'm not sure if that's Exhibit A or 1.

A Okay.

Q It's Exhibit A. Is Exhibit A here, the January 15 letter, is that the initial cease and desist letter that S&L Vitamins received?

A I'm not sure.

Q Have you seen this letter before?

A It's not really telling me anything that I haven't heard so far.

Q Did you think there was a cease and desist letter sent before January 15, 2004 or do you think this is around the time you received word from Australian Gold that it objected to you selling the products on the Internet?

A I don't know.

Q And just so the record is clear, you did receive a copy of this January 15, 2004 letter, correct?

A I'm sure that we received it. Whether I read it upon receipt, I don't know. I am aware of all the information that's on it right now though.

Q And then the second exhibit is a letter

from Mr. Coleman dated January 27, but it references another attorney, Jeffrey Levitt; are you familiar with him?
A No.
Q If you're not, that's okay.
THE WITNESS: Do you?
No, I don't.
MR. MATTHEWS: Mr. Coleman does, but he can't testify.
MR. COLEMAN: He doesn't let me answer the questions. Believe me, we would have done a long time ago.
MR. MATTHEWS: We would have been before the court.
Q Let's look at the allegations in the lawsuit. Paragraph 51 on page 11 of the complaint, go back into the actual complaint itself, page 11.
A 51, I said.
Q Yes. If it says, plaintiff has suffered and will continue to suffer economic harm from defendant's actions. What is the amount of economic harm that you have sustained?
A Only we would know. We've been unable

to grow. I know that our sales from '04 and '05 have decreased. I do believe that it has also put us in a position where we can't be as aggressive with our competitors because we seem to be the only one of the competitors who have legal fees on us.
Q Anything else where you think you've sustained economic harm?
A I love Ron, we have to pay him a decent amount of money. From that point on, I can't think of much else right now, no.
Q Can you put a dollar amount on the amount of economic harm that you contend that you have sustained?
A No, I can't.
Q Is there a reason why you can't or you haven't been able to, is it something you just haven't been able to do or --
A I haven't been able to do it. I try not to think about it because it gives me agita and it will promote more harm other than economic if I start adding it up. So I haven't gotten to that point.
Q And the reason I'm asking Mr. Mercadante

is, we will have a trial some day on this if the case is not resolved in some other fashion. And you're going to, I presume, put in a claim for damages. And I'm entitled to know what damages you contend that you sustained.
A Okay.
Q So right now, you don't have a dollar amount of damages?
A I don't.
Q When you say you were unable to grow, how has Australian Gold prevented S&L Vitamins from growing?
A We've been a little leery about trying to expand our business going into a bigger location. We haven't been able to even if we wanted to afford it due to the cost of this litigation. And that has definitely pinched our ability to grow without a doubt.
Q How do you contend that Australian Gold has caused your sales to decrease?
A We can't compete as much with our competitors anymore.
Q How is that Australian Gold's fault?
A We're here. I don't want to be here.

We're here because of Australian Gold. It's costing us money.
It's costing us legal fees that we have to factor into the pricing that we charge our customers that our competitors do not. We lose customers because of that. That, in turn, has made Australian Gold affect our business.
Q I want to make sure I understand.
A Off the top of my head, that's what I can think of. I'm sure if you give me a little bit of time, I can think of a lot more.
Q I want to make sure you're clear. You authorized Mr. Coleman to file this lawsuit on behalf of S&L Vitamins?
A Absolutely, I did.
Q And Australian Gold had not filed suit against your company at the time you had filed suit against it, correct?
A We believe that they certainly would have. We had to do this to keep it in New York because we would not be able to afford to defend ourselves by going to Indianapolis.
Q Turn to the next page, please, 12.
You've asked for your reasonable attorney fees

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and costs in this litigation, correct?
A Sure.
Q Is that still a claim you're making for attorneys' fees and costs?
MR. COLEMAN: I object to the form. You can answer it.
A It certainly would be.
Q What amount of attorney fees are you claiming in this litigation?
A It's not over yet. I don't know.
Q How much in attorney fees has S&L Vitamins incurred to date?
A I'd have to say somewhere between $50,000 and $100,000. Somewhere between there.
Q How much have you actually paid the Coleman law firm?
A About $8,000 less of that.
Q So somewhere between $42,000 and $92,000 dollars?
A I told you, I can't be exact. What do you want me to tell you?
Q Well, there's a big difference between $50,000 and $100,000 and I would think on a business who is tight on money?

Mercadante 207

A I'm not going to sit here and tell you that it's $500,000. And I'm not going to sit here and tell you it's $100,000. That's a ballpark. I told you, I don't know. That's a ballpark figure that I can come up with.
RL* Q How much per hour is Mr. Coleman charging you for that time?
MR. COLEMAN: Hold on. He's not going to answer these questions. As you know, Scott, the only way they get a fee is if they prevail on a Landham claim and then a fee application goes in on a Landham claim, which is very far along.
If it comes to that, you'll have the opportunity to -- at this point, you're really picking on attorney-client privilege.
MR. MATTHEWS: So you're instructing him not to answer. I think we've been pretty good sports right up until this point.
Q So you're refusing to answer the question on advice of counsel?
A Yes, sir.
MR. MATTHEWS: Just certify that question.

Mercadante 208

Q So any economic harm that you're going to present at trial for damages will not include attorney fees?
MR. COLEMAN: Object to the question. He's not qualified to answer that question.
MR. MATTHEWS: I want to make sure when he's talked about, I'm unable to grow because I've got to pay, I love Ron to death, I got to pay money, I can't be aggressive, it sounds like he's claiming that's part of his damages.
And if he's going to present damage evidence of that at trial, then I'm entitled to know your attorneys' fees. If he's not, that's fine. If the damages are zero, like I said, that's fine. I want to make sure I understand.
THE WITNESS: With all due respect, I don't want to commit to a number now if I am completely off the mark.
MR. COLEMAN: It's not only that, this isn't the definitive opportunity, last clear chance for him to come up with a damage calculation. It's a deposition. He knows

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his business fairly well. He's not an expert in economic losses in commercial cases or Landham cases.
THE WITNESS: I also --
MR. MATTHEWS: No question is pending. Let the record reflect I slapped him on the arm.
Q So today you don't have a dollar amount of damages, correct?
A Yes, sir.
Q I wanted to ask you a couple of questions about the interrogatories that your attorney, I assume, helped you prepare to respond in this litigation. Do you remember having to answer some questions under oath?
A Sure.
Q Interrogatory number 4 talks about physical locations from which you've conducted business and you listed your 308 East Montauk Highway?
A That's right.
Q And I believe we testified that was the only place where you've done business, but in a supplemental letter from your counsel, it

mentions that you have shipped tanning lotions from 59 Cleveland Avenue, Bay Shore, New York 11706?
A Yes, we have.
Q What is at 59 Cleveland Avenue?
A That is the address that should be on the home page of Drills and Taps. Well, actually, that's his father's new address. They had moved.
His father's company does a lot of shipping. When we ship stuff out on a skid, we ship from there because they have a forklift. So it's less expensive for us to get it on a truck.
Q So that's the address. What's the name of Larry Sagarin's father's company?
A I believe it's SAG Supply, S-A-G.
Q How often do you ship products on skids?
A Not often. We've done maybe five or six times.
Q Who are your customers that buys a skid full of tanning lotion?
A We have an overseas customer. Not always tanning lotion.
Q Supplements and other things as well?

A That's right.
Q What's the name of that overseas customer?
A Michael Devlin.
Q Does Mr. Devlin have any affiliation with S&L Vitamins, Inc.?
A No.
Q Do you have any ownership in Mr. Devlin's company?
A No.
Q And Mr. Devlin's company is Body Source UK Limited?
A I believe that's what he calls his website now.
Q Is his site something like SUNESSENTIALSUK.COM or something?
A It was. He's trying to get more into the supplements and he changed his URL.
Q Are you aware of any legal action taken by any European distributor against Mr. Devlin?
A No.
Q Have you had any conversations with Mr. Devlin concerning his sale of Australian Gold tanning lotions on the Internet?

A Not too much. Very, very brief.
Q What's been the substance of your conversations?
A That he got a letter, a cease and desist letter. He decided not to do any more business, sick and tired of the entire tanning industry and wants to get into supplements. Okay. That's where we are.
Q How did you get connected with Mr. Devlin in the UK?
A I didn't really deal with Mr. Devlin all that much. Up until recently. He started getting more involved with the supplements. Changing over his website.
Before then, I didn't really deal with him much. I believe he contacted us. I don't know if it was e-mail or phone.
Q Did you have any, you or Mr. Sagarin have any prior relationship with Mr. Devlin before Mr. Devlin contacted you?
A No.
Q So he just contacted you out of the blue?
A Out of the blue.

Q What did he want?
A He was looking for lotions.
Q Was he looking for supplements, as well, or just lotions at the time?
A Mostly lotions at the time.
Q And he was looking to buy in bulk?
A Fairly, yes.
Q What kind of terms did you agree to sell lotions to Mr. Devlin on?
A Payment before shipping.
Q Did you give him a discount for bulk or volume purchases?
A I don't remember. I honestly don't. And like I said, I didn't deal with Mike much with that.
Q Did you sell him the products at the same price you offered them for sale to the general public on your website?
A No, we didn't. It was different pricing.
MR. MATTHEWS: Mark this as Exhibit 19.
(Mercadante Exhibit 19, multipage document, marked for identification, as of this date.)

Mercadante 214

Q I'm going to hand you a series of documents and I want you to look through these and tell me which pages you can identify or you recognize as belonging to S&L Vitamins.
A I recognize two pages.
Q Which?
A The two Source Pharmaceutical pages.
Q That would be the third and fourth page of the exhibit; is that correct?
A Yes.
Q And the Source Pharmaceuticals identified on this invoice, S&L Vitamins doing business as Source Pharmaceuticals?
A That is, yes.
Q Do these two invoices in Exhibit 19 reflect sales made by S&L Vitamins to Body Source UK Limited?
A Yes.
Q I apologize if I asked you this, do you know if Mr. Sagarin has an ownership in Body Source UK Limited?
A He definitely does not.
Q Do you have any explanation as to why this company in the UK that does business as Body

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Source contacted a company in New York that was Body Source?
A That was not the situation. I think he changed his name to Body UK after.
Q Why?
A I don't know.
Q Did you guys have a conversation about, you ought to change your name to match ours?
A Not me.
Q Did Mr. Sagarin have conversations with him about partnering with Mr. Devlin to expand your business in the UK?
A I don't think so. Not a partnership. He wanted to sell stuff.
Q But a business relationship?
A Absolutely. No partnership.
Q Did you talk about or did Mr. Sagarin or someone on behalf of S&L Vitamins have conversations with Mr. Devlin or his representatives about combining your synergies and using Body Source both here in the United States on the Internet and then overseas in UK?
A Not that I know of. I mean, there was certainly no plan as far as I know of, as far as

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joining partnerships or going into business with each other. We saw him as somebody on the other side of the world who wanted to do business and we'd be willing to sell to him.
Q What was his name before Body Source UK Limited?
A I think it was Sun Essentials.
Q Did Mr. Devlin inform you that he was changing his name to Body Source or was he instructed or advised by you to change his name to Body Source?
A I didn't instruct or advise him anything on that. Whether or not him and Larry had that conversation, I don't know.
Q Do you have any understanding or reason why Larry and he might have a conversation about him changing his name?
A No. Familiarity, I guess. I don't know.
Q That's why I was asking about synergies of the company, if there was some benefit to having someone in New York and someone in the UK using the same name?
A I don't personally see the aggravation.

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You're not talking about a $100 million company over here with us where it's going to be necessary for us to open another warehouse on the other side of the world, which would be more of a hassle than anything else.
But if the guy wants to buy a product from us, then I have no problem selling it to him.
Q How many transactions did S&L Vitamins have with Mr. Devlin?
A I'm not really sure, four or five, six maybe.
Q I've got a transaction here, one that looks like it was -- well, I can't tell. I need you to tell me how much these invoices are. This may be the same invoice.
A I think it's the same invoice.
Q And the pages may be reversed actually, the third page is actually the fourth, but that looks like about $8,000 and some change; is that right?
A Yes. It looks like to me.
Q Were the other transactions four or five transactions of a similar amount?

Mercadante 218

A I can't really remember. I mean, there was nothing that was overly large in comparison to that. I really don't remember.
Q Has Mr. Devlin communicated to you any terms of a settlement that he's reached with the company in the UK?
A He's told me that he decided on his own to stop selling it. As far as legal actions go, I don't know.
Q Did he talk to you about any agreement he was signing with the UK person over there?
A I think I did speak to him, I don't know when it was, maybe 2 weeks ago, he said he was waiting on something to come in the mail to say he was not going to sell any more. It didn't show up.
Q What was the purpose of speaking with him 2 weeks ago?
A Well, he's still doing the BODYSOURCEONLINE.com, which is geared towards sports supplements.
Q So you still have a relationship?
A Yes. We still have a relationship. We're still doing business with him.

Mercadante 219

Q I asked you a question in the interrogatories about the photographs that you had taken. And the response I had received was, plaintiff had hired a photographer to take digital photographs of products owned by plaintiff. The use of these photographs was authorized to the extent necessary.
I was wondering what the sentence meant, the use of these photographs was authorized to the extent necessary?
MR. COLEMAN: I'll object to the form. If you can answer, you can give him an answer.
A I can't answer.
Q Did you prepare that answer?
A No.
Q I asked you another interrogatory answer about any relationship that S&L Vitamins had related to the sale of products in the foreign market.
And it was interrogatory number 11 and the response was that you objected to the interrogatory as vague, the definition of relationship is unclear.

Mercadante 220

Notwithstanding this objection, plaintiffs state that they have no relationship with any person or entity related to the sale of products in foreign markets.
And that statement, to me, seemed contradictory to what you testified about selling to Body Source UK Limited?
A As far as I know, we never denied selling to Mike Devlin.
Q That's what I want to get at because this to me sounded like a denial. So you're telling me, to the extent I've interpreted your answer to interrogatory number 11 is stating, you have no relationship with any person related to the sale in foreign markets, you admit that you sold to Mike Devlin and Body Source UK?
A Absolutely.
Q Is there any other foreign entity to whom S&L Vitamins has sold Australian Gold, Swedish Beauty or Caribbean Gold tanning lotions?
A We had one sale to a gentleman named Phil Peperdi.
Q How do you spell his last name?
A I don't know.

Mercadante 221

Q Say it again.
A Phil Peperdi.
Q Where is he located?
A England. Somewhere in England.
Q What did he purchase?
A Some Velocity packets. He fell off the face of the earth. I don't know what happened to him.
Q Did you actually complete that transaction?
A We tried. We were actually short a little bit on it and we tried to contact him to give him a credit because it was paid for in advance. E-mails, certified letters, everything, phone calls and no answer.
We found out 30 days after we had thought that he received the product, that it was still setting in Heathrow Airport. So I don't know if maybe Australian Gold knows more about it than I do. I don't know.
Q Just for the record, Velocity is an Australian Gold product?
A Yes.
Q When you're talking about package,

you're talking about one individual use packets?
A Yes.
Q How many Velocity packets did he order?
A I don't quite remember. I didn't deal with Phil either.
Q Was it a small amount or was it a large amount?
A No. It was a strangely, a large amount of that item.
Q How long ago it did this take place?
A I couldn't tell you. I think it was 2005, but I'm not really sure.
Q Did you generate an invoice for that?
A Probably.
Q Do you still have a copy of that invoice?
A No.
Q Do you keep your invoices that you send to your customers, invoices that you send to a person that buys one bottle of lotion off the Internet or a person that buys --
A Those we can print up any time. That's backed up from the Yahoo server.
MR. MATTHEWS: Mark this as Exhibit 20.

(Mercadante Exhibit 20, printout of sales, marked for identification, as of this date.)
Q In Mercadante, would you identify what Exhibit 20 is.
A This is a computer printout of all of our Australian Gold sales for 365 days. I assume from January 13, '06 back to January 14 of '05.
Q Who printed out this report?
A It might have been me. It might have been Larry.
Q And this was produced in response to one of our requests for documents in this litigation?
A That's correct.
Q There have been certain products redacted. What are the redacted products?
A Redacted means blacked out?
Q Yes, why are there products redacted?
A Because they're not Australian Gold products.
Q And why did you redact it, you didn't want us to have that information?
A You didn't request it.
Q Where is the report for Swedish Beauty

and Caribbean Gold, I didn't see that on here?
A It wasn't requested either.
Q I think it was.
A No, it wasn't. We were requested for Australian Gold sales only.
Q I think we defined product as any Australian Gold, Swedish Beauty or Caribbean Gold products, but regardless, Australian Gold manufactures all three brand names. Is that information you can get us?
A Possibly.
Q I mean, I can argue with your lawyers over whether or not that was included in the request, but --
A Yes. I'm pretty sure we can get that for you. That's no problem. It's going to look exactly the same like this with a lot of blackouts. And obviously different dates.
Q If I wanted to know what percentage of your business with Australian Gold, Swedish Beauty tanning lotions, this merchant report would tell me, correct?
A Yes.
Q So I could add that up and figure that

out?
A Probably.
Q As you're sitting here today, you can't tell me what percentage of your business Australian Gold is?
A No. Because we have a storefront also. This is Internet sales.
Q I understand. But what percentage of your sales of tanning lotions is through the Internet versus in your store?
A We don't sell -- I could count on one hand how many bottles we sell inside the store. The storefront is sports nutrition.
Q So 99.9 percent of your sales of tanning lotions are going to be on the Internet?
A That's right.
Q But if I wanted to know what percentage of tanning lotion sales was Australian Gold, this Yahoo Small Business Merchant Solutions report would tell me?
A Probably would, yes.
Q But today, you can't tell me what percentage of tanning lotion sales are Australian Gold?

Mercadante 226

A Right.
Q Does every item that's sold through your Internet website get reported on this Yahoo Small Business Merchant Solution?
A I believe so.
Q Is there any way to clear it or reset it?
A How do you mean reset it?
Q I don't know. I just wanted to know if there's a way that if I click on a product to purchase on a website, that it's going to go here or if there's any way that this would be inaccurate or incorrect?
A Well, obviously if I was to do the same printout, obviously numbers will change because it's --
Q It's ongoing?
A Right.
Q Okay.
A So, I mean, the numbers that you see here will be different, but --
Q But this isn't a report you could manipulate, in other words, and go in and type in 696 items of Australian Gold Dark Tanning

Mercadante 227

Accelerator?
A No.
Q You hit a button and the report is generated by Yahoo?
A That's it.
MR. MATTHEWS: Mark this as Exhibit 21.
(Mercadante Exhibit 21, statement of income, marked for identification, as of this date.)
Q Can you identify Exhibit 21, please?
A From the header, S&L Vitamins, statement of income loss and retained earnings for the period ending September 30, 2005.
Q Is that when your fiscal year ends, September 30?
A You'd have to ask my accountant that. I don't know.
Q Did your accountant prepare this report?
A Yes.
Q I want to look at some of your expenses. It says you spent $49,080.12 in advertising for the period ending September 30, 2005?
A It's possible.
Q And then I've got at the very bottom it

Mercadante 228

says, Internet and website costs $3,910.05. I'm just trying to understand what you spent on Internet advertising, if that was the Internet costs for the $39,000 and if the $49,000 figure was newspaper or TV or radio or what?
A No. The Internet and website costs are just Yahoo's fees for hosting our website. We call it the VIG. I think they take 3 percent or something like that of total sales. That would be the cost of the Internet and website costs.
The advertising would include the pay per clicks and that type of stuff which -- that's the reason why we're trying to shy away from it this year.
Q Under cost of goods sold, it says freight in, what is that $171,158.30 figure represent?
A I don't know. I'd have to ask my accountant.
Q Do you charge your customers for shipping?
A Yes.
Q So shipping is tacked on at the end of the sale?

Mercadante 229

A Yes. They figure it out for me.
Q And I know tanning lotions is only a portion of your business; does other product get shipped in by UPS or Fed Ex or other carriers for which you pay money?
A Not usually. Sometimes.
Q The $171,000 is an awfully lot of money for a freight in expense and I'm just not sure what that means.
A $6 per order, we charge each customer.
Q But you're passing that cost on to the customer, so it's really not a cost to you?
A Well, we have to pay it.
Q So it's added to your revenue, all right. But that's something your accountant would know perhaps?
A Yes. That also would include those couple of skids that we shipped out of that Deer Park or Bay Shore.
Q Close to the bottom it says, distribution to shareholders $171,067.94. To whom were the distributions made?
A This, again, I have no idea. These type of questions you have to ask my accountant.

Mercadante 230

Q I assume you're a shareholder, so it's to you and Ms. Fanning or you and Mr. Sagarin?
A Well, no. Mr. Sagarin gets -- car expenses are included. Insurances are included.
Q Is it your testimony that you're living off of $22,200 a year?
A No.
Q What type of salary have you drawn from the company, are you drawing?
A I did a couple of years ago. $40,000. Last year I got a check after taxes for $610 a week. I get some car expenses. This year, I had to take a little bit of a pay cut for myself, I get $500 a week, same some car expenses. But I am getting medical insurance.
Q So you didn't get a periodic distribution from the company or you didn't, you or Mr. Sagarin or Ms. Fanning didn't get, to your knowledge, $171,000 out of the company?
A I really don't know. I mean, I know I did not get $171,000 last year, I know that.
Q Well, your testimony is last year you earned $40,000?
A I think so. I think that's what $610,

Mercadante 231

yes.
Q You didn't receive any bonus or any other form of compensation other than the benefits you mentioned, the car expense?
A Right.
Q I would call your accountant. That's an awful lot of money showing being paid out to somebody.
A I'm sure he has an explanation.
Q Do you know when this period began?
A What period?
Q It says for the period ending September 30, 2005. Do you know when that began?
A I would guess October 1, 2004.
MR. MATTHEWS: Mark this as Exhibit 22.
(Mercadante Exhibit 22, request for production of documents, marked for identification, as of this date.)
Q I'm going to hand you what's been marked as Exhibit 22 and this is Australian Gold's first request for production of documents to S&L Vitamins, Inc. and Larry Sagarin.
Would you look at page 3 and read how products are defined.

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A Okay.
Q Would you agree with me that products include any Australian Gold, Caribbean Gold, or Swedish Beauty tanning lotions or products?
A According to this, yes.
Q Would you look at request number 24, please. Does that ask for any and all documents related to all orders received by you for any of the products?
A Okay.
Q So would you agree with me that I had asked for, not only Australian Gold but Swedish Beauty and Caribbean Gold?
A Okay.
RQ* MR. MATTHEWS: Counsel, I just ask that that be supplemented.
MR. COLEMAN: I see no reason why we wouldn't.
MR. MATTHEWS: I appreciate your cooperation, thank you, sir.
MR. COLEMAN: I just would ask you as a housekeeping matter to follow up in writing so that it doesn't get lost.
MR. MATTHEWS: I will do that.

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MR. COLEMAN: I don't doubt that for a second.
MR. MATTHEWS: Mark this as Exhibit 23.
(Mercadante Exhibit 23, W-2 employee summary, 2005, marked for identification, as of this date.)
Q Would you tell me what Exhibit 23 is, Mr. Mercadante?
A W-2 employee summary, 2005.
Q For S&L Vitamins?
A I guess it's 2005. It's written in, it looks like, with pen. I don't even know.
Q And then there's previous years from 2000 through 2005, correct?
A Well, that's what the handwriting on it says, yes.
Q Just for the record, I'll represent that these documents were given to me by your counsel. It shows that your wages for 2005 were $31,849.97. Do you see that?
A Okay. Yes, I do.
Q Do you agree with it that that's the amount you took out of the company for 2005?
A What is the line below it?

Mercadante 234

Q I think that's taxes, if I read it right, wages are one, below it is tax. I don't know. It's not my document. That's how I interpreted it.
A That's probably correct, yes.
Q Give or take, you know, a few hundred dollars or a few thousand dollars, do you believe that you received -- that this amount looks correct?
A Yes.
Q And the only two persons who received wages in 2005 from S&L Vitamins were you and Michael Neirman?
A That's correct.
MR. MATTHEWS: Mark this as Exhibit 24.
(Mercadante Exhibit 24, distributorship contract, marked for identification, as of this date.)
Q I handed you Exhibit 24. Have you seen this document before?
A Not that I recall.
Q This is Australian Gold's distributorship contract. Back when the initial cease and desist letters came, there were some

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reference to the letters that we're providing you with a copy of the contract.
Do you remember getting a copy of that contract either directly through me or your counsel?
A I remember hearing of the contracts. I don't remember receiving them or reading them. I know of them.
Q Do you know of their contents regarding the restriction on sale of products?
A I'm pretty certain it's got nothing to do with me, but --
Q Has Mr. Sagarin received this contract, do you know?
A I don't know.
Q I assume you don't know if he's read it or not either?
A I don't.
Q Do you understand that Australian Gold is alleging in this lawsuit and it's counterclaims that your company has interfered with its contracts and it's a distribution scheme?
A I absolutely understand that that's what

Mercadante 236

Australian Gold is claiming. We what we are claiming is we have, we are not bound by those contracts whatsoever. We never signed anything. We never did business with anybody who was involved with these contracts.
Q All right. As O, that's fine. Thanks.
MR. MATTHEWS: Mark this as Exhibit 25.
(Mercadante Exhibit 25, checks, marked for identification, as of this date.)
Q Mr. Mercadante, Exhibit 25, are these checks written by S&L Vitamins, Inc.?
A Yes, they are.
Q Do you know what these checks represent as far as what their purpose was for?
A Yes.
Q What was the purpose of these checks?
A Payment for tanning lotion.
Q Are these all of the checks that S&L Vitamins has with respect to payment of tanning lotions?
A These were all the checks they was able to find, yes.
Q You testified earlier that you're currently with Bank of America?

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A Right.
Q Is Apple Bank a different bank or is that a bank that was bought by --
A No. Apple Bank was our original bank when we first opened up. The reason for that was because they were closest. They were right across the street.
But as things went on -- they're a savings bank. They're not really helpful and they don't have the products that hopefully a growing business needs.
Q So you decided to --
A So we switched to Bank of America last year.
Q Closed all your accounts out with Apple Bank?
A Yes.
Q This is going to be hard to do because it's so thick, but if you can turn back about halfway through, it's check 3902, and that's a check to Yucan Greenvale?
A I haven't found it yet, but what's the question.
Q There's a memo line in there that I want

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to ask you about. In the memo line, it says Future Industries NV number 123462. Do you know what that is a reference to?
A I don't know. I didn't sign the check.
Q Are you familiar with Future Industries?
A I know that they are a distributor, yes.
Q Do you know if Yucatan had purchased tanning lotions on your behalf from Future Industries?
A I know that Yucatan probably did purchase from Future Industries and we paid Yucatan.
Q I understand. Why would there be a reference to the invoices, is that just showing --
A I don't know. Like I told you before, we get the invoices to check in our order. To figure out what their commissions are and write the check out and then we give them the check with the invoice.
Maybe there was another invoice, another payment that was lying around, so in order to not have any confusion, Larry wrote that in there, I guess. I have no idea. That's 2 years ago,

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almost, today. As well, not signed by me. I have no idea.
MR. MATTHEWS: I have no further questions.
(Time noted: 4:10 p.m.)

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, STEVEN MERCADANTE, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of March 1, 2006; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

____
STEVEN MERCADANTE

Subscribed and sworn to before me this _____ day of ____________________, 2006.

____
NOTARY PUBLIC

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C E R T I F I C A T E

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, MICHELE ROSSI, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That, STEVEN MERCADANTE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness, whereof, I have hereunto set my hand this 7th day of March, 2006.

____
MICHELE ROSSI, R.P.R.

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